

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION

ROGER A. LIBBY,

Plaintiff,

v.

ERIC J. LIBBY,

Defendant.

)
)
)
)
)
)
)
)
)
)

No. 2:24 CV 11 JMB

MEMORANDUM AND ORDER

This matter is before the Court on review of self-represented Plaintiff Roger A. Libby's motion for leave to proceed *in forma pauperis* on appeal (Doc. 45). For the following reasons, Plaintiff's motion will be denied.


Federal Rule of Appellate Procedure 24(a)(1) provides that a party who desires to appeal *in forma pauperis* must file a motion in the district court, along with an affidavit which shows "the party's inability to pay," "claims an entitlement to redress," and "states the issues that the party intends to raise on appeal." Additionally, 28 U.S.C. § 1915(a)(2) requires a prisoner who is seeking leave to appeal *in forma pauperis* to provide a certified copy of his prison trust fund account statement for the 6-month period immediately preceding the filing of the notice of appeal. See Yates v. Baldwin, 633 F.3d 669, 672 (8th Cir. 2011) (per curiam); Henderson v. Norris, 129 F.3d 481, 484-85 (8th Cir. 1997) (per curiam). While Plaintiff has filed an affidavit that lists his assets and expenses, the affidavit does not claim an entitlement to redress or set forth the issues he intends to raise on appeal. Plaintiff has also failed to provide a copy of his prison trust fund account statement.

Furthermore, Plaintiff indicates in his affidavit that he has \$5,070.51 in his prison trust account, \$550.00 in his prison savings account, and modest monthly expenses. See Henderson, 129 F.3d at 485 (if a district court does not receive a certified copy of the prisoner's prison account, it may look to other available financial information). The appellate filing fee is \$600. Due to Plaintiff's available cash funds, the Court finds that he has not shown he is unable to pay the appellate filing fee. See Stergen v. Stergen, No. 4:23-cv-1231-PLC, 2023 WL 6795409, at *1 (E.D. Mo. Oct. 13, 2023) (in determining whether an applicant is sufficiently impoverished, a district court considers whether he would become completely destitute or be forced to give up the basic necessities of life if required to pay the costs of the lawsuit; the opportunity to proceed *in forma pauperis* is a privilege rather than a right); see also Cross v. Gen. Motors Corp., 721 F.2d 1152, 1157 (8th Cir. 1983) (the Court has sound discretion in determining whether an applicant qualifies for *in forma pauperis* status under § 1915). The Court will therefore deny Plaintiff's motion to proceed on appeal without prepaying fees or costs.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's motion for leave to proceed *in forma pauperis* on appeal (Doc. 45) is **DENIED**.

Dated this 22nd day of April, 2025.



MATTHEW T. SCHELP
UNITED STATES DISTRICT JUDGE